

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
DRIVERS, SALESMEN, WAREHOUSEMEN, MILK	:	Case V
PROCESSORS, CANNERY, DAIRY EMPLOYEES	:	No. 13111
AND HELPERS UNION LOCAL NO. 695	:	ME-479
	:	Decision No. 9371
Involving Employes of	:	
	:	
DANE COUNTY (CITY-COUNTY BUILDING)	:	
Madison, Wisconsin	:	

ORDER OF DISMISSAL

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, having petitioned the Wisconsin Employment relations Commission to conduct an election among certain employes of Dane County, Madison, Wisconsin; and hearing on said petition having been conducted at Madison, Wisconsin, on October 16, 1969, Chairman Morris Slavney being present; that during the course of the hearing Dane County Joint Council of Unions, consisting of Locals 65, 705 and 720, AFSCME, being permitted to intervene in the proceedings on its claim that it was the presently recognized collective bargaining representative for the employes involved, and the Commission having considered the evidence, and arguments of Counsel, and being fully advised in the premises, and being satisfied that the petition herein was untimely filed;

NOW, THEREFORE, it is

ORDERED

That the petition filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 12th day of December, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney Chairman
Zel S. Rice II, Commissioner

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Madison, Wisconsin	:	
	:	

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local 695, on September 8, 1969, filed a petition with the Commission requesting that an election be conducted among all building and grounds maintenance employes employed by Dane County at the City County Building, Madison, Wisconsin, excluding supervisors and all other employes. During the course of the hearing Dane County Joint Council of Unions consisting of Locals 65, 705 and 720, AFSCME, was permitted to intervene on its claim that it was presently recognized as the collective bargaining representative for the employes involved in the petition.

The evidence disclosed that the County has recognized the Joint Council of Unions since 1958 and in that relationship Dane County and said Joint Council on November 29, 1968, entered into a collective bargaining agreement for the year 1969. Said collective bargaining agreement contended among its provisions, the following material herein:

"ARTICLE I
Recognition

The Employer recognizes the Union as the exclusive collective bargaining representative for all regular full-time and regular part-time employees of the Employer except law enforcement personnel employed in the Sheriff's Department and in the Traffic Department, and Supervisors as defined by law, for the purposes of conferences and negotiations with the Employer, or its authorized representatives, on questions of wages, hours and other conditions of employment.

ARTICLE XVIII

THIS AGREEMENT shall be effective as of the 1st day of January, 1969, and shall remain in full force and effect through the 31st day of December, 1969. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing on or before the 1st day of August of any year in which the Agreement is in force that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin not later than 30 days after August 1; this Agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this Agreement is provided to the other party in the manner set forth in the following paragraph. However, nothing said herein, shall prevent the parties from altering or amending, at any time, any part hereof by mutual consent.

In the event that either party desires to terminate this Agreement, written notice must be given to the other party not less than 10 days prior to the desired termination date which shall not be before the anniversary date set forth in the preceding paragraph.

If any article or section of this Agreement or any addendums thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of this Agreement and addendum shall not be affected thereby, and the parties shall enter into collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or section."

Included in the collective bargaining unit described in Article I are certain craft positions, such as painter and operating engineer, and various professional positions, such as nurses, social workers and attorneys.

Pursuant to Article XVIII the Joint Council of Unions on July 28, 1969 directed a letter to the County Clerk, which letter served as a notice that said Joint Council of Unions wished to modify certain articles of the agreement and that its proposals would be forwarded at a later date. Thereafter representatives of the Joint Council of Unions and the County commenced negotiations on September 9, 1969, with respect to wages, hours and working conditions for the employees covered by the existing agreement, to become effective January 1, 1970. As of the date of the hearing, October 16, 1969, representatives of the Joint Council and the County met on seven or eight occasions in negotiations, but had not reached an agreement on the latter date.

The Joint Council of Unions and the County urged the Commission to dismiss the petition, alleging that it was not timely filed.

The Petitioner contends first, that since the Joint Council of Unions was voluntarily recognized, rather than certified after a Commission election, as the bargaining representative of the employees

covered in the collective bargaining agreement, and since the employes covered in the Petition are employed in a separate division of the County, the Commission should direct the election. Secondly, the Petitioner argues that the collective bargaining agreement cannot constitute a bar to a present determination of bargaining representatives since the unit of employes covered thereby includes craft and professional employes contrary to Section 111.70(4)(d).

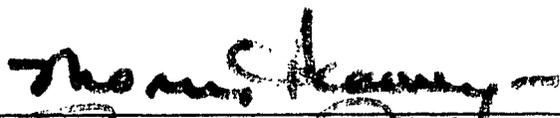
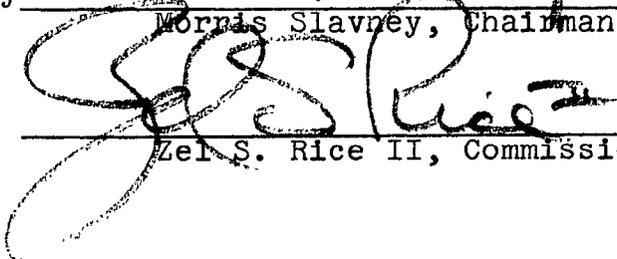
In support of its argument the Petitioner cites the Commission's decision in City of Milwaukee (Fire Department)^{1/}, wherein the Commission held that an agreement covering wages, hours and working conditions of employes in a unit, which included craft and non-craft employes, was not a bar to an election sought by an organization seeking to represent the craft employe, who was included in said unit contrary to Sec. 111.70(4)(d).

Since the petition filed herein seeks a unit consisting of employes in a separate department, rather than employes engaged in a single craft or profession, the policy of the Commission expressed in the City of Milwaukee (Fire Department) does not apply, despite the fact that the agreement involved covers craft; professional and other employes of the County.

Under the rule adopted by the Commission in Milwaukee County,^{2/} the petition herein was untimely filed since it was not filed within a sixty day period prior to the date reflected in the agreement for the commencement of negotiations for a succeeding agreement. In fact the petition was filed over thirty days following the reopening of negotiations between the Joint Council of Unions and the County for the year 1970.

Dated at the City of Madison, Wisconsin, this 12th day of December, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman

Zel S. Rice II, Commissioner

1/ Dec. No. 7885, 1/67
2/ Dec. No. 8855, 1/69.